

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Fermin Cuza

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CONCILIATION AGREEMENT

This matter was initiated by a Complaint filed with the Federal Election Commission ("the Commission") by Mattel, Inc. See 2 U.S.C. §§ 437g(a)(1). The Commission found reason to believe Fermin Cuza knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f.

NOW, THEREFORE, the Commission and the Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Fermin Cuza is a former Senior Vice President of Mattel who was in charge of Mattel's International Trade and Worldwide Government Affairs, supervised the Consumer Affairs Department and oversaw Mattel's Customs department. He held this position from June 1997 to March 2001.

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2. Mattel, Inc. is a Delaware corporation with headquarters in El Segundo, California.

3. Alan Schwartz is the sole proprietor of AMS Consulting Services, LLC *aka* Asset Management Systems (hereinafter referred to as "AMS"), which has its office in Torrance, California.

4. Beginning in 1996, Mr. Cuza caused Mattel, Inc. to make payments to AMS for various consulting services and for other purposes.

5. 2 U.S.C. § 441f prohibits: (1) making a contribution in the name of another; (2) knowingly permitting one's name to be used to effect such a contribution; and (3) knowingly accepting such a contribution. In addition, no person may knowingly help or assist any person in making a contribution in the name of another. 2 U.S.C. § 441f; 11 C.F.R. § 110.4(b)(1)(iii).

This prohibition also applies to any person who provides the money to others to effect contributions in their names. 11 C.F.R. § 110.4(b)(2).

6. Corporations are prohibited from making contributions or expenditures from their general treasury funds in connection with any election of any candidate for federal office. 2 U.S.C. § 441b(a). Section 441b(a) also makes it unlawful for any candidate, political committee, or other person knowingly to accept or receive a contribution prohibited by section 441b(a).

7. The Act addresses violations of law that are knowing and willful. *See* 2 U.S.C. §§ 437g(a)(5)(B) and 437g(d). The phrase "knowing and willful" indicates that "actions [were] taken with full knowledge of all of the facts and a recognition that the action is prohibited by law." 122 Cong. Rec. H3778 (daily ed. May 3, 1976).

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8. Mr. Schwartz, via AMS, submitted two types of invoices for payment by Mattel, Inc. Of the first type were monthly invoices for his consulting services, which were submitted directly to Mattel, and paid directly by Mattel. Invoices of the second type were submitted to and paid by Laxmi, a California corporation which provides a bill-paying service for Mattel. With regard to invoices submitted by AMS to Laxmi, in most instances, Mr. Cuza would approve the AMS invoices and then forward them to Laxmi. Laxmi would then pay AMS, and in turn seek reimbursement from Mattel through an automatic payment system.

9. Mr. Cuza caused Mattel, Inc. to reimburse contributions made to federal political committees by himself, Mrs. Ines Cuza, Tammy Orozco, Frank Orozco, and others. Reimbursements were made through payments from Mattel, Inc. to AMS. Mr. Schwartz and/or AMS would remit to Mr. Cuza reimbursements for those contributions made by Mr. and Mrs. Cuza, and Mr. and Mrs. Orozco. Mr. Cuza's recollection and records are not precise with respect to the number and amount of the reimbursed contributions, but he does not contest reimbursement of the \$120,714 in reimbursed contributions stated in paragraphs 10-22 of this Section of the agreement.

10. Mr. Cuza does not contest that he caused Mattel Inc. to reimburse the following \$29,064 in contributions to federal political committees that were made in his own name:

04/11/1997	Gephardt in Congress Committee	\$1,500
05/09/1997	Toricelli for U.S. Senate, Inc.	\$1,000
06/23/1997	Menendez for Congress	\$2,000
09/23/1997	Becerra for Congress	\$1,000
11/26/1997	Committee to Re-Elect Loretta Sanchez	\$1,000
12/01/1997	Effective Government Committee	\$1,500
12/03/1997	Gephardt in Congress	\$500
12/17/1997	Friends of Barbara Boxer	\$1,000
12/22/1997	Friends of Lois Capps	\$500

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01/13/1998	Friends of Barbara Boxer	\$1,000
03/16/1998	Bob Filner for Congress	\$1,000
05/02/1998	Lincoln Diaz-Balart for Congress	\$2,000
07/31/1998	Leadership '98	\$2,500
09/09/1998	Hahn for Congress	\$500
10/13/1998	Committee to Re-Elect Loretta Sanchez	\$500
10/21/1998	Ros-Lehtinen for Congress	\$564
10/26/1998	Leadership of Today and Tomorrow	\$5,000
10/30/1998	Hahn for Congress	\$500
02/10/1999	Gore 2000, Inc.	\$1,000
06/30/1999	Gore/Lieberman GELAC Fund	\$1,000
11/21/1999	Becerra for Congress	\$1,000
12/22/1999	Solis for Congress	\$250
03/07/2000	Friends of Jane Harman	\$1,000
03/07/2000	Friends of Jane Harman	\$1,000
03/30/2000	Kuykendall Congressional Committee	\$250

11. Mr. Cuza does not contest that he caused Mattel Inc. to reimburse the following \$10,000 in contributions that were made in the name of Ines Cuza to federal political committees:

04/11/1997	Gephardt in Congress	\$1,500
09/23/1997	Becerra for Congress	\$1,000
05/02/1998	Lincoln Diaz-Balart for Congress	\$2,000
05/19/1998	Committee to Re-Elect Loretta Sanchez	\$2,000
10/30/1998	Hahn for Congress	\$ 500
06/30/1999	Gore/Lieberman GELAC Fund	\$1,000
03/07/2000	Friends of Jane Harman	\$1,000
03/07/2000	Friends of Jane Harman	\$1,000

12. Mr. Cuza does not contest that he caused Mattel Inc. to reimburse the following \$57,650 in contributions that were made in the name of Alan Schwartz to federal political committees:

06/05/1996	Gephardt in Congress	\$500
10/03/1996	New Democratic Majority	\$2,000
04/01/1997	Gephardt in Congress	\$1,500
04/21/1997	Friends of Jane Harman	\$2,000
06/13/1997	Menendez for Congress	\$1,000

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08/14/1997	Becerra for Congress	\$2,000
11/14/1997	Sanchez for Congress	\$1,000
11/17/1997	Gephardt in Congress	\$500
12/04/1997	Friends of Lois Capps	\$1,000
12/09/1997	Committee to Reelect Loretta Sanchez	\$500
12/11/1997	Friends of Barbara Boxer	\$1,000
01/19/1998	Juanita Millender McDonald	\$500
02/18/1998	Shelley Berkeley for Congress	\$1,000
02/18/1998	Friends of Lois Capps	\$250
02/18/1998	Boxer for Senate	\$150
02/25/1998	Boswell for Congress	\$500
03/04/1998	Committee to Reelect Loretta Sanchez	\$500
04/23/1998	Sherman for Congress	\$1,000
04/23/1998	Casso for Congress	\$1,000
04/23/1998	Barry Gordon for Congress	\$1,000
04/28/1998	Committee to Reelect Loretta Sanchez	\$2,000
05/01/1998	Diaz-Balart for Congress	\$2,000
06/19/1998	Effective Government Committee	\$1,000
07/28/1998	Leadership '98	\$1,000
08/14/1998	Friends of Barbara Boxer	\$250
09/01/1998	Barry Gordon for Congress	\$250
10/14/1998	Effective Government Committee	\$2,500
02/10/1999	Gore 2000 Inc.	\$1,000
02/17/1999	Feinstein 2000	\$1,000
04/06/1999	Schiff for Congress	\$500
04/09/1999	Effective Government Committee	\$2,500
06/30/1999	Democratic Congressional Campaign	\$5,000
09/28/1999	Schiff for Congress	\$500
10/06/1999	Schiff for Congress	\$1,000
11/23/1999	Democratic Leader's Victory Fund	\$2000
11/23/1999	Gephardt in Congress	\$1,000
12/22/1999	Solis for Congress	\$250
01/25/2000	Friends of Jane Harman	\$1,000
01/25/2000	Friends of Jane Harman	\$1,000
06/09/2000	Effective Government Committee	\$5,000
08/28/2000	DNC Services Corp/Dem. Nat'l Comm.	\$5,000
08/30/2000	DNC Services Corp/ Dem. Nat'l Comm.	\$2,000
11/13/2000	Lincoln Diaz-Balart for Congress	\$1,000

13. Mr. Cuza does not contest that he caused Mattel Inc. to reimburse the following \$2,000 in contributions that were made in the name of Tammy Orozco to federal political committees:

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06/30/1997	Friends of Jane Harman	\$1,000
06/30/1997	Friends of Jane Harman	\$1,000

14. Mr. Cuza does not contest that he caused Mattel Inc. to reimburse the following \$2,000 in contributions that were made in the name of Frank Orozco to federal political committees:

06/30/1997	Friends of Jane Harman	\$1,000
06/30/1997	Friends of Jane Harman	\$1,000

15. Mr. Cuza does not contest that he caused Mattel Inc. to reimburse the following \$5,000 in political contributions that were made in the name of John Balestra to federal political committees:

07/01/1996	Friends of Jane Harman	\$1,000
03/03/2000	Friends of Jane Harman	\$1,000
03/03/2000	Friends of Jane Harman	\$1,000
10/23/2000	DNC Services Corporation	\$2,000

16. Mr. Cuza does not contest that he caused Mattel Inc. to reimburse the following \$2,000 in political contributions that were made in the name of Jacqueline Balestra to federal political committees:

03/03/2000	Friends of Jane Harman	\$1,000
03/03/2000	Friends of Jane Harman	\$1,000

17. Mr. Cuza does not contest that he caused Mattel Inc. to reimburse the following \$1,000 in political contributions that were made in the name of Sheryl Green to federal political committees:

06/30/1999	Gore 2000 Inc.	\$1,000
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18. Mr. Cuza does not contest that he caused Mattel Inc. to reimburse the following \$2,000 in political contributions that were made in the name of Gloria Zwinak to federal political committees:

03/03/2000	Friends of Jane Harman	\$1,000
03/03/2000	Friends of Jane Harman	\$1,000

19. Mr. Cuza does not contest that he caused Mattel Inc. to reimburse the following \$2,000 in political contributions that were made in the name of Katherine Walker to federal political committees:

03/03/2000	Friends of Jane Harman	\$1,000
03/03/2000	Friends of Jane Harman	\$1,000

20. Mr. Cuza does not contest that he caused Mattel Inc. to reimburse the following \$500 in political contributions that were made in the name of Frank Gomez to federal political committees:

05/02/1998	Lincoln Diaz-Balart for Congress	\$500
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21. Mr. Cuza does not contest that he caused Mattel Inc. to reimburse the following \$3,000 in political contributions that were made in the name of Ella Schwartz to federal political committees:

12/03/1997	Gephardt in Congress	\$1,000
05/06/1998	Committee to Re-Elect Loretta Sanchez	\$1,000
05/06/1998	Committee to Re-Elect Loretta Sanchez	\$1,000

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22. Mr. Cuza does not contest that he caused Mattel Inc. to reimburse the following \$4,500 in political contributions that Kathleen Wilcox (formerly Kathleen Schwartz) made to federal political committees:

07/12/1996	Friends of Jane Harman	\$1,000
04/11/1997	Gephardt for Congress	\$1,000
04/11/1997	Gephardt for Congress	\$500
05/12/1997	Friends of Jane Harman	\$1,000
05/12/1997	Friends of Jane Harman	\$1,000

V. Mr. Cuza knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f by consenting to prohibited corporate contributions by Mattel, Inc., by allowing his name to be used to make contributions in the name of another, and by assisting Mattel, Inc. in making contributions in the name of another.

VI. Respondent will pay a civil penalty to the Federal Election Commission in the amount of one hundred eighty-eight thousand dollars (\$188,000) pursuant to 2 U.S.C. § 437g(a)(5)(B) in three installments. The first installment of \$30,000 will be paid within thirty days from the date this agreement becomes effective as provided in Section X hereof. The second installment of \$75,000 will be paid no later than January 2, 2003. The third installment of \$83,000 will be paid no later than May 1, 2003. Respondent will cease and desist from violating 2 U.S.C. §§ 441b(a) and 441f. Further, Respondent Fermin Cuza will waive his right to a refund of all political contributions from the recipient committees and will instruct each recipient to disgorge all contributions referenced in this agreement, that have not been previously refunded or disgorged, to the U.S. Treasury.

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VII. Pursuant to 2 U.S.C. § 437g (a)(4)(A)(i), this agreement, unless violated, is a complete bar to any further action by the Commission against or concerning Respondent Fermin Cuza in connection with the facts and allegations in this matter.

VIII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g (a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

IX. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

X. Other than as to the payment of the civil penalty, the timing of which is governed by Section VI hereof, Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

XI. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

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FOR THE COMMISSION:

Lawrence H. Norton
General Counsel

12/3/02
Date

BY: Rhonda J. Vosdingh
Rhonda J. Vosdingh
Associate General Counsel

RESPONDENT:

Fermin Cuza
Fermin Cuza

11/9/02
Date

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